

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ADAM BROWN, on behalf of himself and
all others similarly situated,

Plaintiff,

Case No. 1:23-cv-00374-LY

v.

LEARFIELD COMMUNICATIONS,
LLC, SIDEARM SPORTS, LLC,
UNIVERSITY OF TEXAS AT AUSTIN, and
THE UNIVERSITY OF TEXAS AT AUSTIN
ATHLETICS,

Defendants.

**DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
THEIR MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendant Learfield Communications, LLC and Sidearm Sports, LLC (collectively “Learfield”), by and through their undersigned counsel, hereby give notice of the Memorandum Opinion and Order in *Gabriella Hernandez v. The Container Store, Inc.*, No. 223CV05067HDVRAO, 2024 WL 72657 (C.D. Cal. Jan. 3, 2024) (Vera, J.) (attached hereto as Exhibit 1), which supports the arguments Learfield makes in its pending Motion to Dismiss (Doc. 39 at 6-7, 8-11) and which was issued after briefing on the Motion to Dismiss closed.

In *Hernandez*, the Court held that Plaintiff did not sufficiently allege that defendant was a “video tape service provider” under the VPPA by virtue of hosting videos on its website for marketing purposes, reasoning that:

It is not plausible to allege, as Plaintiff does here, that Defendant is “engaged in the business” of delivering video content by including on its website “pre-recorded videos,” such as the “Custom Spaces” video, that “market the products offered for sale on its website.” *Id.* ¶¶ 4, 44–45. The Complaint fails to allege how these

“videos used for marketing purposes” are central, rather than “peripheral to Defendant’s business.

The *Hernandez* Court also held that Plaintiff did not sufficiently allege she was a “consumer” under the VPPA by virtue of purchasing non audio-visual goods or services from defendant, reasoning that:

Plaintiff does not allege that she purchased any “audio-visual goods or services” from Defendant, and indeed alleges that the “products” Defendant sells are “container products and associated goods.” *Id.* ¶ 29. Plaintiff therefore cannot plead any “nexus” between her purchase and the “video content at issue.”

Carter and similar cases explain without qualification that the term “consumer”—the umbrella term used in the VPPA’s operative provision—applies only to a “renter, purchaser or subscriber of audio visual goods or services.”

Hernandez, 2024 WL 72657 at *2-3.

Dated: January 8, 2024

Respectfully submitted,

/s/Rachel Palmer Hooper

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*Attorneys for Defendants Learfield
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically filed on January 8, 2024 with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

/s/Rachel Palmer Hooper